

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

KELVIN ARNOLD LEWIS,

Petitioner,

v.

CIVIL ACTION NO. 2:18cv206

**HAROLD W. CLARKE, Director,
Virginia Department of Corrections,**

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254, and a supplement to the Petition, ECF Nos. 1 and 5, and the Respondent's Motion to Dismiss, ECF No. 10. On January 15, 2015, in the Circuit Court for King George County, Virginia ("Trial Court"), following an October 16, 2014 jury trial in which Petitioner was convicted of rape, robbery, and forcible sodomy, Petitioner was sentenced to serve thirty-seven years in the Virginia Department of Corrections. In the instant petition, the *pro se* Petitioner raises three grounds for relief on the basis he was denied his constitutional right to a fair trial. The matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B)-(C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002 Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and Recommendation filed on November 28, 2018, the Magistrate Judge recommended the motion to dismiss be granted, and the petition be denied and dismissed with prejudice as both exhausted and procedurally defaulted without any cause stated for the default or demonstration that a fundamental miscarriage of justice will result. ECF No. 17. The parties were advised of

their right to file written objections to the Report and Recommendation.

On December 13, 2018, the Court received from the Petitioner a Motion for Extension of Time to reply and respond to the Report and Recommendation. ECF No. 18. For good cause shown, the Court granted Petitioner's request for extension, and ordered Petitioner to file his objections to the Report and Recommendation by January 2, 2018. ECF No. 19. On January 4, 2019, Petitioner filed a motion to Voluntarily Dismiss this civil action. ECF No. 20. Respondent did not respond to either the Report and Recommendation or Petitioner's Voluntary Dismissal filing, and the time to do so has expired. In Petitioner's filing, he asks the Court "to withdraw this civil action at hand" due to "this case at hand is very complacated (sic) and needs counsel's help to obtain documents, and legal investigation (sic) into the issues." *Id* at 1. The Petitioner does not address the Magistrate Judge's recommendation that the petition be dismissed with prejudice as both exhausted and procedurally defaulted.


Pursuant to Federal Rule of Civil Procedure 72(b)(3), the Court reviewed *de novo* the Magistrate Judge's Report and Recommendation. After review, the Court fully accepts the findings and recommendations of the Magistrate Judge, and the Court hereby **ADOPTS** and **APPROVES** the Report and Recommendation, ECF No. 17, in its entirety as the Court's own opinion. Accordingly, the Respondent's motion to dismiss, ECF No. 10, is **GRANTED**. The petition, ECF No. 1, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is **ORDERED** that judgment be entered in favor of the Respondent. As such, the Petitioner's motion to voluntarily withdraw the petition, ECF No. 20, is **DISMISSED AS MOOT**.

The Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a *written* notice of appeal with the Clerk of the Court at the Walter

E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date judgment is entered. Because the Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b)(1), the Court declines to issue a certificate of appealability. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Order to the Petitioner and counsel of record for the Respondent.

It is so **ORDERED**.



Raymond A. Jackson
United States District Judge

RAYMOND A. JACKSON
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
Date: 1/22/19